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No. 90-89

In the Supreme Court of the United States

OCTOBER TERM, 1990

INTERNATIONAL PRIMATE PROTECTION LEAGUE AND ITS MEMBERS, ET AL., PETITIONERS

v.

ADMINISTRATORS OF TULANE EDUCATIONAL FUND, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL INSTITUTES OF HEALTH IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners' suit to enjoin research activities related to privately owned laboratory animals was properly dismissed for lack of standing.

2. Whether federal agencies may remove cases pursuant to 28 U.S.C. 1442(a)(1).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A15) is reported at 895 F.2d 1056.

JURISDICTION

The judgment of the court of appeals (Pet. App. A1-A15) was entered on March 8, 1990. A petition for rehearing was denied on April 13, 1990. Pet. App. A24-A25. The petition for a writ of certiorari was filed on July 12, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns the care and custody of macaque monkeys that were the subject of experiments to discern whether the monkeys recovered use of limbs after nerves to the limbs were severed. Pet. App. A2. The experiments were conducted during 1981 by a private research facility—then called the "Institute for Behavioral Research, Inc.," later the "Institutes for Behavior Resources" (IBR)—under funding from the National Institutes of Health (NIH). *Ibid.* The purpose of the experiments was to gain information that could be used in rehabilitating human patients with neurological damage. *Ibid.*

In September 1981, Maryland police executed a warrant at IBR and seized the monkeys, acting upon allegations that the monkeys were being mistreated. Pet. App. A3. Pursuant to a court order, NIH assumed custody of the monkeys. *Ibid.* After that order expired, NIH continued to act as the monkeys' principal custodian with the consent and cooperation of the monkeys' owner, IBR. Pet. App. A3-A4.

In December 1988, NIH announced plans to perform euthanasia on three of the monkeys pursuant to the recommendation of a panel of independent experts. Pet. App. A4. These three monkeys were then being kept at Tulane University's Delta Regional Primate Research Center. *Ibid.* The euthanasia procedure, which would involve deep surgical anaesthesia, was designed to be humane and painless and to gain knowledge that could lead to improvements in rehabilitation therapy for persons who have suffered brain or spinal cord damage, a stroke, or similar injuries. *Ibid.*

Before NIH could carry out the euthanasia, petitioners sued NIH, IBR, and the Administrators of Tulane Educational Fund (Tulane) in Louisiana state court. Pet. App. A4. Petitioners sought an order enjoining the euthanasia and granting custody of the monkeys to petitioners or members of the U.S. Congress. Pet. App. A38-A39. After the state court granted petitioners' motion for a temporary injunction barring respondents from performing euthanasia on the three monkeys, NIH removed the case to the United States District Court for the Eastern District of Louisiana pursuant to 28 U.S.C. 1442 (a)(1). NIH then moved to dismiss the case on, among other grounds, petitioners' failure to establish Article III standing to sue.

Pending consideration of NIH's motion, the district court entered an order that in effect continued the temporary restraining order granted by the state court. Pet. App. A16. The district court later refused to vacate its order when NIH objected that the order had exceeded the twenty-day limit imposed by Federal Rule of Civil Procedure 65(b). Pet. App. A4.

NIH and Tulane appealed the order, which they argued had become the functional equivalent of a preliminary injunction appealable under 28 U.S.C. 1292(a)(1), to the United States Court of Appeals for the Fifth Circuit. Pet. App. A4. On appeal, NIH and Tulane argued that the injunction was improper because petitioners failed in their pleadings to establish Article III standing and so had not proven likelihood of success on the merits.[1]

[1] NIH and Tulane also argued that petitioners' suit was barred by the Supremacy Clause and failed to state a cause of action under Louisiana state law. The court of appeals did not reach those arguments. Pet. App. A5.

The court of appeals agreed that none of the three bases for standing alleged by petitioners satisfied Article III requirements; it accordingly vacated the injunction and dismissed the case. With regard to the first basis asserted—a "permanent disruption of [petitioners'] personal relationships with the monkeys"—the court observed that the Fourth Circuit had already rejected the "virtually identical" claim when in previous litigation the claim was asserted against IBR by two of the petitioners herein. See *International Primate Protection League* v. *Institute for Behavioral Research, Inc. (IPPL)*, 799 F.2d 934 (4th Cir. 1986), cert. denied, 481 U.S. 1004 (1987). The court below adopted the reasoning of the Fourth Circuit, which held that petitioners had not established a sufficient causal connection between the alleged injury and the conduct complained of: "[E]ven if the defendants were to comply with the laws putatively violated, the plaintiffs would still lack any right to continue their personal relationships with the monkeys." Pet. App. A6. The court below further held that petitioners' second and third allegations of Article III injury—asserting harm to their "long-standing, sincere commitment to preventing inhumane treatment of animals" and to their "mission as advocates for the rights" of the monkeys—did not state cognizable injuries. For this holding, the court below relied principally on *Sierra Club* v. *Morton*, 405 U.S. 727 (1972), and *Valley Forge Christian College* v. *Americans United for Separation of Church & State*, 454 U.S. 464 (1982). Pet. App. A8-A11.[2]

[2] The court of appeals also rejected as irrelevant petitioners' contention that they had met the requirements for standing under state law, noting that the existence of Article III standing is governed by federal law. Pet. App. A11.

The court of appeals also held that the case was properly removed under 28 U.S.C. 1442(a)(1). Pet. App. A11-A15. Relying on prior decisions of the Fifth Circuit, the court rejected petitioners' argument that Section 1442(a)(1) does not authorize removal by federal agencies. Pet. App. A12-A13. The court also rejected petitioners' argument that, although they had named NIH as a defendant, NIH's interest in the monkeys was insufficient to permit removal under Section 1442(a)(1). Pet. App. A13-A15. The court concluded that "the only prerequisite to removal of a civil action under § 1442 is that it be *brought against* a federal officer or agency." Pet. App. A13 (quoting *IMFC Professional Services* v. *Latin American Home Health, Inc.*, 676 F.2d 152 (5th Cir. 1982)). The court further concluded that "NIH's possessory, financial and research interests" in the monkeys were sufficient to warrant the protection of a federal forum afforded by the removal statute. Pet. App. A13-A15.

After the court of appeals issued its ruling and denied petitioners' motion for a stay of mandate pending certiorari (Pet. App. A26), respondents performed the euthanasia procedure previously planned for three of the monkeys. Earlier, upon the court's granting petitioners' motion for partial immediate resolution of the appeal, NIH had also performed euthanasia on a fourth monkey that was in severe pain and danger of imminent death. The case is not moot, however, because four monkeys of the original group of seventeen are still alive and are being housed at the Delta Regional Primate Research Center in Louisiana. Pet. 4.

ARGUMENT

The decision of the court of appeals is correct and presents no issue meriting review by this Court.

1. The court of appeals' ruling that petitioners' pleadings did not establish Article III standing is correct and does not conflict with any decision of this Court or any court of appeals.[3]

Petitioners' complaint alleged three forms of injury: (1) "permanent disruption of their personal relationships with the monkeys," Pet. App. A37; (2) impairment of their "sincere commitment to preventing inhumane treatment of animals, especially as concerns the monkeys now at Delta," Pet. App. A37-A38; and (3) impairment of their "mission as advocates for the right of the Silver Spring Monkeys, who have no means of protecting themselves," Pet. App. A38. None of these allegations demonstrates Article III standing.[4]

a. Petitioners' first allegation of injury was addressed by the Fourth Circuit in a case that this

[3] The court of appeals correctly applied federal law to determine whether petitioners had standing. See Pet. App. A11 (citing cases). See also *Pennell* v. *City of San Jose*, 485 U.S. 1 (1988) (applying federal law to determine whether plaintiffs had Article III standing to sue in federal court); *Secretary of State of Maryland* v. *Joseph H. Munson Co.*, 467 U.S. 947, 953-54 n.2 (1984) (same); *Waller* v. *Georgia*, 467 U.S. 39, 43-44 & n.3 (1984) (same); *Tileston* v. *Ullman*, 318 U.S. 44 (1943) (same).

[4] Petitioners improperly charge that in assessing their standing the court of appeals ignored several of their claims. Pet. 18. This charge is misguided, for it confuses allegations regarding legal theories of recovery with allegations regarding the injury for which recovery is sought. The latter were properly the focus of the court of appeals' analysis. See *Los Angeles* v. *Lyons*, 461 U.S. 95, 103 (1983); *O'Shea* v. *Littleton*, 414 U.S. 488, 499 (1974).

Court declined to review. *International Primate Protection League, Inc.* v. *Institute for Behavioral Research, Inc. (IPPL)*, 799 F.2d 934 (1986), cert. denied, 481 U.S. 1004 (1987). In *IPPL*, two of the petitioners in this case alleged that the same conduct complained of here caused "disruption of their personal relationship" with the same group of monkeys involved in this case. 799 F.2d at 938. The Fourth Circuit held that these allegations did not demonstrate standing because the asserted injury was not fairly traceable to the challenged conduct: "[T]hese plaintiffs could not see the monkeys in the IBR laboratory if the defendants satisfied all requirements of care." *Ibid.* Petitioners now concede (Pet. 21) that this holding was correct.

The holding denying standing in *IPPL* is fully applicable in this case, as the court below recognized. Here, as in *IPPL*, any relationship between petitioners and the monkeys has come about largely in the course of litigation. *Ibid.* To this extent, any disruption flows from the vicissitudes of litigation and is not cognizable injury in fact. See, *e.g.*, *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982). Any other ties that may exist are jeopardized, not by the conduct complained of, but by the fact that these monkeys are privately owned research animals. It is the fact of private ownership, about which petitioners do not and could not complain, that causes the alleged injury.[5] In short, petitioners' assertion (Pet. 21) of a "right

[5] This fact distinguishes this case from those involving feral animals. *E.g.*, *Japan Whaling Ass'n* v. *American Cetacean Soc'y*, 478 U.S. 221 (1986). The court of appeals was correct to conclude (Pet. App. A6-A7) that such cases "provide scant support" for petitioners' claim of injury.

of future contact" with the monkeys suffers from the same "traceability" defect identified in *IPPL*.[6]

Petitioners cannot cure this defect by asserting that they sought broader relief in this case than they did in *IPPL*. See Pet. 21.[7] The scope of relief requested may affect the "redressability" component of the standing inquiry; it is irrelevant, however, to the "fairly traceable" component. *Allen* v. *Wright*, 468 U.S. 737, 746-747 (1984). "Cases such as this, in which the relief requested goes well beyond the violation of law alleged, illustrate why it is important to keep the [" 'fairly traceable' and redressability"] inquiries separate." *Id.* at 753 n.19. Petitioners thus offer no reason why the Fourth Circuit's admittedly correct ruling in *IPPL* should not apply here.

This is not to say that petitioners fare any better in satisfying Article III's requirement that they show their alleged injury "is likely to be redressed

[6] The court of appeals in this case was correct to focus, as did the Fourth Circuit in *IPPL*, on petitioners' alleged interest in future contact with the monkeys rather than on allegations of past injury. *Sierra Club* v. *Morton*, 405 U.S. 727 (1972); *Animal Protection Inst. of America* v. *Hodel*, 860 F.2d 920, 923-924 (9th Cir. 1988); *Alaska Fish & Wildlife Fed'n & Outdoor Council, Inc.* v. *Dunkle*, 829 F.2d 933 (9th Cir. 1987), cert. denied, 485 U.S. 988 (1988); *Animal Welfare Inst.* v. *Kreps*, 561 F.2d 1002 (D.C. Cir. 1977). This focus is mandated by the Article III requirement that federal courts only exercise jurisdiction when judicial relief would redress the injuries alleged. See, *e.g.*, *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74 (1978).

[7] Contrary to petitioners' assertion (Pet. 21), their request in this case for custody of the monkeys does not distinguish the relief sought here from that sought in *IPPL*. Plaintiffs in *IPPL* also sought custody of the monkeys. 799 F.2d at 937.

by a favorable decision." *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38, 41 (1976). On the contrary, as the court below held (Pet. App. A8)—a holding that petitioners do not challenge—petitioners' complaint failed to allege that they had met the statutory prerequisites to removal of the primates from NIH's custody under Louisiana law.[8] This failure, as the court below correctly observed, distinguishes this case from those in which plaintiffs have included officials authorized by state law to prosecute violations of animal cruelty laws. Compare *Humane Society* v. *Lyng*, 633 F. Supp. 480 (W.D.N.Y. 1986). Moreover, none of petitioners' other state law causes of action entitled them to continue their relationships with the monkeys or to be granted custody of them. See Pet. App. A35-A37.

b. The court of appeals was correct when it held that plaintiffs' second and third allegations of injury were insufficient to create Article III standing. In *Sierra Club*, this Court addressed an allegation substantially similar to petitioners' second allegation, which asserts a long-standing commitment to preventing inhumane treatment of animals. See 405 U.S. at 735-740. The Court concluded that assertion

[8] Petitioners' Appendix omits several lines from this portion of the court of appeals' opinion, which, as reported, reads as follows:

> The plaintiffs maintain that among their numbers are humane officers authorized under Louisiana law to remove animals being treated cruelly. *See* La.Rev.Stat.Ann. § 3:2431 (West 1987). The plaintiffs' complaint, however, makes no mention of this fact, does not assert a cause of action under § 3:2431, and fails to allege that any of statutory prerequisites to animal removal have been met. *See id.* at §§ 3:2432-38.

895 F.2d at 1060.

of such an interest does not satisfy the "require-[ment] that the party seeking review be himself among the injured." *Id.* at 735. Just as an interest in conservation was not enough in *Sierra Club* to establish standing in the absence of a link to the particular lands at issue, so too here an interest in humane treatment of animals is not enough to establish standing in the absence of a link to the particular animals at issue here. See *Lujan* v. *National Wildlife Federation*, 110 S. Ct. 3177, 3187-3189 (1990).

In *Valley Forge*, the Court addressed an allegation substantially similar to plaintiffs' third allegation, which asserts their role as advocates for the primates. The Court in *Valley Forge* expressly rejected the notion that standing should be granted simply because judicial review otherwise would be unavailable. 454 U.S. at 489. The court of appeals' application of *Sierra Club* and *Valley Forge* to conclude that petitioners' second and third allegations of injury were insufficient was clearly correct.

c. In any event, the court of appeals would have been justified to dismiss this case on Supremacy Clause grounds. U.S. Const. Art. VI, Cl. 2. The Supremacy Clause plainly bars petitioners' attempt to use the state law causes of action alleged in their complaint to regulate the federal government's custody of the monkeys. See, *e.g.*, *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, —— n.1 (1988); *Hancock* v. *Train*, 426 U.S. 167, 178 (1975). The Supremacy Clause required dismissal of the private defendants as well as NIH in this action, because the state law causes of action petitioners asserted would have effectively prohibited NIH from carrying out its plans to perform euthanasia on the monkeys. So applied, state law would directly conflict with

the federal policy against interference with federally funded research that employs laboratory animals. See 7 U.S.C. 2143(a)(6)(A)(i) and (ii); see also, *e.g.*, *Public Utilities Comm'n* v. *United States*, 355 U.S. 534, 544 (1958); *Leslie Miller, Inc.* v. *Arkansas*, 352 U.S. 187 (1956) (per curiam). Thus, the Supremacy Clause argument, which was raised below but not reached, provided an independent ground upon which this case was properly dismissed.

2. This Court should not grant certiorari to decide whether NIH was entitled to remove this case to federal court under 28 U.S.C. 1442(a)(1). The decision below does conflict with the Third Circuit's decision in *Lovell Mfg., Div. of Patterson-Erie Corp.* v. *Export-Import Bank of United States*, 843 F.2d 725, 733 (1988), but that court is the only other court of appeals to have directly addressed the question whether Section 1442(a)(1) is available to federal agencies, as well as federal officers.[9] The issue would benefit from "further study" in the lower courts "before it is addressed by this Court," *McCray* v.

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[9] Contrary to petitioners' view (Pet. 11-13), the Fourth Circuit did not "implicitly" hold in *IPPL* that agencies may not remove cases to federal court under 1442(a)(1). Plaintiffs in *IPPL* brought suit in state court alleging both state and federal law causes of action. *IPPL*, 799 F.2d at 936-937. The case was therefore removable under Section 1441, and NIH removed it without opposition. *Id.* at 937. The Fourth Circuit dismissed the case, including the state law claims, upon ruling that plaintiffs had not stated a federal claim. *Id.* at 938-940. The Court based dismissal not upon an intepretation of Section 1442(a)(1), but rather on the fundamental principle of pendent jurisdiction that "state claims should usually be dismissed if the federal claims have been dismissed before trial." 799 F.2d at 941 (citing *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715 (1966)).

New York, 461 U.S. 961, 963 (1983) (Stevens, J.), and accordingly certiorari should not be granted at this time.

As evidenced by the fact that only two circuits have decided the question, the issue of the applicability of Section 1442(a)(1) to federal agencies does not arise with sufficient frequency to warrant this Court's immediate attention. The reason is clear: Federal agencies normally cannot be sued in their own name in state court. This case is a good example. Petitioners' state court suit against NIH was plainly barred by sovereign immunity. See, *e.g.*, *Dugan* v. *Rank*, 372 U.S. 609, 620-622 (1963). There is a waiver of sovereign immunity in the Administrative Procedure Act that might apply to the activities of NIH, see 5 U.S.C. 702, but the waiver is expressly limited to actions brought in federal court.[10] In addition, NIH—like many federal agencies—may not be sued in its own name. *Blackmar* v. *Guerre*, 342 U.S. 512 (1952) (agency may not be sued *eo nomine* in the absence of statute authorizing such suit).[11] Thus, the question petitioners seek

[10] See *Aminoil, U.S.A., Inc.* v. *California State Water Resources Control Bd.*, 674 F.2d 1227, 1233 (9th Cir. 1982) ("[T]he waiver of sovereign immunity in section 702 is expressly limited to actions brought 'in a court of the United States . . . .' The legislative history demonstrates that section 702 was not intended to effect a waiver of sovereign immunity for suits against the United States or its officers in state courts. 'The consent to suit is also limited to claims in the courts of the United States; hence, the United States remains immune from suit in state courts.' H.R. Rep. No. 94-1656, 94th Cong., 2d Sess. 11 (1976) * * *.").

[11] Though improperly sued in its own name, NIH clearly had an interest in this case sufficient to entitle NIH to remove it. As the court of appeals determined, NIH has "possessory, financial, and research interests" in the monkeys that were

to present concerning Section 1442 has arisen only because this suit was improperly filed in state court in the first place, in violation of sovereign immunity, against the wrong defendant. Such a case is a peculiarly inappropriate vehicle in which to attempt to address the question petitioners seek to raise.

Finally, the court below correctly concluded that Section 1442(a)(1) authorizes federal agencies to remove cases to federal court. Section 1442(a)(1) has roots reaching back to 1815, when Congress was concerned that States might interfere with enforcement of a federally promulgated boycott of English goods.[12] See *Willingham* v. *Morgan*, 395 U.S. 402, 405 (1969). Thus, the statute is "an incident of federal supremacy," and it protects "the very basic interest in the enforcement of federal law through federal officials." *Id.* at 406.

Section 1442(a)(1) affords this protection by providing a federal forum to rule on defenses raised in response to claims attacking federal actions. 395 U.S. at 407. As this Court stated in *Willingham*, 395 U.S. at 407, "Congress has decided that federal officers, and *indeed the Federal Government itself*,

threatened by this suit. Pet. App. A13. The court did not, in making this determination, engage in impermissible fact-finding. See App. A and B, *infra*. The court had an ample factual basis to support its conclusion and did not contradict any of the trial court's findings of fact. Moreover, NIH's interest in this case is clear from the provisions that establish NIH's statutory mandate. See 42 U.S.C. 281-284c. In any event, petitioners' fact-specific challenge to the court of appeals' determination does not justify this Court's review.

[12] While earlier versions of the removal statute protected only revenue officers, Section 1442(a)(1) was expanded during the 1948 recodification of Title 28 "to apply to all officers and employees of the United States or any agency thereof." H.R. Rep. No. 308, 80th Cong., 1st Sess. A134 (1947).

require the protection of a federal forum. This policy should not be frustrated by a narrow, grudging interpretation of [Section] 1442(a)(1)." (emphasis added). See also *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138, 144-147 (1971) (extending to federal agency rule permitting suit by the United States to enjoin enforcement of state court injunction).

Section 1442(a)(1) would afford scant protection to the federal government if it were read to preclude removal by federal agencies. Such a narrow interpretation would enable plaintiffs to deprive the government of a federal forum merely by naming only the agency, and not its officials, as a defendant. This expediency clearly would contravene the policy enunciated in *Willingham*, for any relief granted against the agency would bind its officials. Cf. Fed. R. Civ. P. 65(d). See also 14A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3727, at 457 (2d ed. 1985) (allowing agencies to remove under Section 1442(a)(1) "is justified in terms of the intent of Congress to protect the valid exercise of federal authority; a less inclusive construction would serve to frustrate that end").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1990

APPENDIX A

AFFIDAVIT

STATE OF LOUISIANA

CITY OF NEW ORLEANS

I, Peter Gerone, Sc.D., having been duly sworn, state that the following is true and correct:

1. I am the Director of the Delta Regional Primate Research Center of Tulane University.

2. In accepting the Silver Spring monkeys in June of 1986, on behalf of Tulane University, it was my understanding that we would aid the National Institutes of Health (NIH) in its role as the custodian of the monkeys which are legally owned by the Institute for Behavioral Resources, Inc. (IBR) of Washington, D.C.

3. In aiding the (NIH) in its role as custodians of these monkeys, we accepted the responsibility to suitably house them, provide for their clinical care, and consider resocializing the animals, if that was feasible.

4. Although my staff and I have been involved in making evaluations and recommendations regarding health and well-being of the Silver Spring monkeys, the final decisions regarding clinical care have been made and will continue to be made by the owners, IBR, and the primary custodians, NIH.

Peter J. Garone
PETER J. GARONE, Sc.D

SUBSCRIBED AND SWORN BEFORE ME THIS 26 DAY OF JANUARY, 1989.

[Illegible]
NOTARY PUBLIC

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 88-5713

INTERNATIONAL PRIMATE PROTECTION LEAGUE, et al.,

v.

ADMINISTRATORS OF THE TULANE EDUCATION FUND, et al.

DECLARATION OF JOSEPH V. BRADY

Joseph V. Brady declares:

1. I am the President and Chairman of the Board of the Institutes for Behavioral Resources, Inc. (IBR). I have been President since August 1988 and Chairman for the past five (5) years. I have been a member of the Board of IBR since the founding of its predecessor, I have thorough knowledge of the events surrounding the nonhuman primates that were seized by the Montgomery County Police from the IBR laboratories in September, 1981.

2. Since October 14, 1981 the monkeys have been in the care and custody of the National Institutes of Health (NIH). From that date to August 10, 1983, the NIH custody of the animals has been maintained with the consent and cooperation of the IBR, although we have never signed a document formalizing the custody arrangement.

3. Throughout the period of NIH custody, NIH has housed and fed the animals and provided routine veterinary care with minimal consultation with the

IBR. NIH has consulted with the IBR on major medical procedures regarding the animals and on its plans for them. In some cases, IBR has not fully agreed with the NIH decisions regarding the animals. However, after stating our views, we acquiesced in those decisions.

4. We did not pay NIH for the costs it incurred while the animals were cared for at the National Institutes of Health and we have no intention of doing so. Since the animals were transferred to the Delta Regional Primate Center in Covington, Louisiana, we have been reimbursing NIH at the rate of $1.82 per day for each animal. We recognize that this does not cover all the costs incurred by the NIH.

5. We were consulted by the NIH regarding the proposed euthanasia of three of the animals and we fully concur with the NIH decision. We strongly support the research that would be conducted in conjunction with the euthanasia. We believe this research will benefit rehabilitation therapy, that it will fulfill the function for which the animals were obtained by the IBR and will ensure that their long period of maintenance in a deafferented condition has not been in vain.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: February 10, 1989

/s/ Joseph V. Brady
JOSEPH V. BRADY

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